Claims 39-46 are rejected under 35 USC 103(a) as being unpatentable over YATKA et al. (US 5,458,892) or MEYERS et al. (US 5,236,719).

Applicants respectfully disagree.

The problem to be solved by the Applicants was to provide for a new boiled sugar which can be a plain boiled sugar which, as indicated in page 8 lines 16 to 23 of the specification:

- does not become sticky,
- does not grain or turn opaque and white in surface,
- does not become misshapen at normal summer temperatures in temperate climates.

Neither YATKA et al. nor MEYERS et al. relate to such a problem.

The solution to said problem is a boiled sugar which comprises:

- a sugar or polyol having a water solubility lower than 60g/l and selected among a very small number of compounds,
- and a specific anti-crystallising agent selected among pyrodextrins having a molecular weight ranging between 4000 and 5000 daltons.

The Examiner consider that the molecular weight of 4000 and 5000 is not critical.

Applicants respectfully disagree.

Example 2 relates to the "Effect of the molecular weight of the anti-crystallising agent" and clearly shows that only the

boiled sugar comprising a anti-crystallising agent with a molecular weight of 4500 gives good results (mixture 2).

The Examiner considers that the invention is unpatentable over YATKA et al. since: on the one hand, in examples 190-192, boiled sugars containing a highly soluble polyol and pyrodextrin are described, and on the other hand YATKA et al. discloses that lactitol or mannitol are viable alternatives for the polyols in said examples.

Applicants respectfully disagree.

Firsly, as mentionned above, even if boiled sugars are described, there is no mention anywhere in YATKA et al. about the stability, the state of crystallization of said boiled sugars.

Secondly, the fact that it is indicated in the specification that polyols presenting different solubility in water, such as sorbitol, maltitol, xylitol, lactitol, mannitol can be used without prejudice, is the evidence that said patent teaches away from the invention.

Thus, in said patent there is no indication, no suggestion of the selection of the polyols of the invention which needs to present a water solubility of lower than 60g/l.

The specific boiled sugars of claim 39 are thus patentable over YATKA et al.

Since claims 40, 42 to 47 depend on claim 39, they are also patentable over YATKA et al.

Like in YATKA et al., it is indicated in MEYERS et al. that dextrin can be used with polyols presenting different solubility in water, such as sorbitol, maltitol, xylitol, lactitol, mannitol, palatinit and hydrogenated starch, in sugar-free confections such as chewing gums and candies.

Thus in this patent, there is no mention, no suggestion of the specific problems of the boilde sugars and there is no indication, no suggestion of the selection of the polyols of the invention which needs to present a water solubility of lower than 60g/l.

The specific boiled sugars of claim 39 are thus patentable over MEYERS et al.

Since claims 40, 42 to 47 depend on claim 39, they are also patentable over YATKA et al.

It is respectfully submitted that the application is now in proper form for allowance.

Respectfully submitted
RIBADEAU-DUMAS et al.

May 14, 2002
Date

Michael O. Sturm
Reg. No. 26,078

HENDERSON & STURM LLP
206 Sixth Avenue, Suite 1213
Des Moines, Iowa 50309-4076

Telephone : (515) 288-9589
Telefax : (515) 288-4860